



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R5–ES–2020–0028; FXES111X0500000–XXX–FF05E00000]**

**Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Karner Blue Butterfly and Frosted Elfin in the Albany Pine Bush Preserve, Albany, Colonie and Guilderland, New York; Categorical Exclusion**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from the Albany Pine Bush Preserve Commission (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed endangered Karner blue butterfly incidental to otherwise lawful activities associated with expansion of an existing trail system and routine property maintenance and management activities within the Albany Pine Bush Preserve. The applicant also seeks take coverage for the frosted elfin butterfly, listed as threatened by the State of New York, should it become federally listed in the future. The applicant proposes a conservation program to minimize and mitigate the impacts of unavoidable incidental take of the two species, as described in its habitat conservation plan (HCP). We invite public comment on the application, which includes the applicant's proposed HCP, and the Service's preliminary determination that the covered actions and incidental take which may occur under this proposed HCP, if implemented, qualifies as "low effect," and therefore our issuance of the requested ITP authorizing the take would

be categorically excluded from further review under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

**DATES:** We will accept comments received or postmarked on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

**ADDRESSES: *Reviewing documents:*** You may obtain copies of the application, including the HCP and the draft environmental action statement, in Docket No. **FWS–R5–ES–2020–0028** at <http://www.regulations.gov>.

***Submitting Comments:*** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R5–ES–2020–0028.
- U.S. mail: Public Comments Processing; Attn: Docket No. FWS–R5–ES–2020–0028; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see **Request for Public Comments and Public Availability of Comments** under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Noelle Rayman-Metcalf, by telephone at 607-753-9334, or by email at Noelle\_rayman@fws.gov. Hearing or speech impaired individuals may call the Federal Relay Service at 800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

Section 9 of the ESA and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened (16 U.S.C. 1538). Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

**Applicant’s Proposed Project**

The applicant requests a 20-year ITP to take two covered species, the endangered Karner blue butterfly and the frosted elfin (should it become federally listed in the future). The applicant determined that unavoidable take is reasonably certain to occur incidental to the proposed construction of 2.7 miles of trail and routine property maintenance and management activities that will affect approximately 1.94 acres (ac) of occupied or suitable habitat for the covered species.

The conservation program in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species, and is intended to complement ongoing conservation efforts for the covered species in New York State. The HCP proposes establishment and ongoing maintenance of approximately 6 ac of wild blue lupine to increase breeding and foraging habitat for the covered species to offset the anticipated impacts of the taking.

### **National Environmental Policy Act**

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). The Service has made a preliminary determination that the impact of the covered actions and the incidental take likely to result from the applicant's project, including expansion of the existing trail system, routine property maintenance and management activities, and the proposed conservation program, would individually and cumulatively have a minor or negligible effect on the Karner blue butterfly, the frosted elfin, and the environment. Therefore, we have preliminarily concluded the covered actions and incidental take which may occur under this proposed HCP, if implemented, qualifies as "low effect," and therefore our issuance of the requested ITP authorizing the take would be categorically excluded from further review under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect ITP is one in which covered actions and incidental take in accordance with the HCP would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and

reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

### **Next Steps**

The Service will evaluate the application and the comments received to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

### **Request for Public Comments**

The Service invites the public to comment on the proposed HCP and draft environmental action statement during a 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES**.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA regulation 40 CFR 1506.6.

**Sharon Marino,**

*Assistant Regional Director,*

*Ecological Services.*

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